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SUPREME COURT OF THE UNITED STATES.

No. 64.—October Term, 1927.

Kinney Coastal Oil Company et al., Petitioners, vs. Michael F. Kieffer et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[June 4, 1928.]

This case presents a controversy over the relative rights conferred by an oil and gas lease and by a homestead patent for the same lands—both issued by the United States and each containing a reservation of the rights conferred by the other.

The lands in question are two adjoining forty acre tracts within the Salt Creek oil field, in Natrona County, Wyoming, which became a producing field, widely known as such, before any step was taken to secure either the lease or the patent.

By executive order issued July 2, 1910, under the act of June 25, 1910, c. 421, 36 Stat. 847, these lands—being then public lands of the United States—were withdrawn from settlement, location, sale or entry under the existing public land laws and were reserved as being valuable for oil to await further legislation respecting the disposal of lands of that character. The contemplated legislation came in part in the Act of July 17, 1914, c. 142, 38 Stat. 509, and in part in the act of February 25, 1920, c. 85, 41 Stat. 437.

The act of 1914 looks to the severance and separate disposal of the surface and the underlying minerals. It provides that lands of the United States withdrawn, classified or reported as valuable for oil, gas or other designated mineral deposits shall be subject to disposal under the non-mineral land laws, but that the disposal shall be with "a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine and remove the same," and that such deposits shall be "subject to disposal by the United States only as shall be hereafter expressly directed by law." The act further provides:

"Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon

the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages."

The act of 1930 relates particularly to the disposal of oil, gas and other designated mineral deposits in the lands of the United States, including those specified in the act of 1914. In the main it provides that the disposal of such deposits shall be through leases entitling the lessees to extract and remove the deposits and to make such use of the surface as may be necessary for that purpose and requiring the lessees to pay fixed royalties, and in some instances a further compensation, to the United States. The parts of the act having a present bearing are as follows:

"Sec. 17. That all unappropriated deposits of oil or gas situated within the known geologic structure of a producing oil or gas field . . . not subject to preferential lease, may be leased by the Secretary of the Interior to the highest responsible bidder by competitive bidding . . . such leases to be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease. . . . Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods.

"Sec. 29. . . . *Provided*, That said Secretary, in his discretion, in making any lease under this Act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therefrom: *Provided further*, That if such reservation is made it shall be so determined before the offering of such lease.

"Sec. 32. That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do

any and all things necessary to carry out and accomplish the purpose of this act, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this act:

"Sec. 34. That the provisions of this act shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits."

April 2, 1920, the Secretary of the Interior, pursuant to § 32 of the act of 1920, determined the boundary lines of the known oil structure or deposit in the Salt Creek field. The lines so determined included the two forty acre tracts in question.

December 29, 1921, as a result of competitive bidding invited under § 17 of that act, and in consideration of a bonus of $51,750 paid to the United States, the Secretary of the Interior, conformably to existing regulations,[1] awarded and issued to Oscar W. Rohn a lease of the oil and gas in these tracts and in another forty-acre tract in the same field. The lease was given for a term of twenty years, with a conditional privilege of renewal under § 17, and granted to the lessee the exclusive right to drill for, extract and remove the oil and gas deposits in the three tracts, together with the right to construct and maintain on the surface "all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipe lines, reservoirs, tanks, pumping stations or other structures" needed in such mining operations. It required the lessee to exercise reasonable diligence in drilling and operating wells for oil and gas and to pay to the United States a royalty of 25% on the oil produced and a royalty varying from 12½% to 16⅔% on the gas; and it reserved to the United States the right to dispose of "the surface of the lands" under existing or future laws "in so far as said surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas". It also required the lessee—

"To comply with all statutory requirements and regulations thereunder, if the lands embraced herein have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of oil and gas therein, subject to such conditions as are or may hereafter be provided by the laws reserving such oil or gas."

[1] Regulations of March 11, 1920, §§ 13-17, 47 L. D. 446.

At the time the lease was issued the lessee, pursuant to the existing regulations, executed with approved surety a bond to the United States in the amount of $[illegible] for the use and benefit of the United States and of any entryman or patentee of any portion of the land [illegible] hereinbefore entered or patented with a reservation of the oil and gas deposits to the United States, conditioned on the lessee's faithful compliance with all the provisions of the lease.

August 9, 1922, that lease was consolidated with others into a new lease of the character and form issued by the Secretary of the Interior to the Kinney Coastal Oil Company, and a bond [illegible] that above described was given by the company with approved surety, to secure its faithful compliance with all the provisions of the consolidated lease.

In 1918 Michael F. Kieffer made application at the local land office to make a preliminary homestead entry of the two forty-acre tracts in question and other contiguous lands. He knew the lands were within the executive withdrawal of July 2, 1910, and the Salt Creek oil field, and he asserted that if his application was granted the oil and gas deposits should be reserved to the United States for disposal under future laws as contemplated in the act of 1914. The preliminary homestead entry was allowed with that reservation. See Regulations of March 25, 1913, paragraphs 5-8, 41 L. D. 42, 54, and in due course was carried to a final entry on which a homestead patent was issued [illegible] October 12, 1922. The patent was for 320 acres, including the two forty-acre tracts in question, and contained the following exception and reservation:

> Also excepting and reserving to the United States all the oil and gas in the lands so patented, [illegible] the patentee and [illegible] the right to prospect for, mine and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of July 17, 1914.

After his preliminary homestead entry was allowed Kieffer constructed a residence and several outbuildings on part of the lands included therein other than the tracts in question and resided there with his family. He enclosed the tracts in question with a barbed wire fence and in each of two years planted and harvested about seven acres of rye thereon, but in no other way did he improve or cultivate those tracts.

[1] Regulations of March 11, 1912, [illegible] 40 L. D. 547, 551.

The Kinney Coastal Oil Company, soon after receiving its lease, entered on one of the tracts in question, stored thereon equipment and supplies required in operations under the lease, erected buildings needed for its employees and began drilling for oil and gas. Kieffer knew of the lease and acquiesced in these operations under it. One well was completed in the latter part of 1923 at a cost of $22,522.60 and oil and gas were produced therefrom in paying quantities. The company proceeded with the extraction of oil and gas from that well and also made preparation for drilling others. Stakes were driven marking places for eight more distributed over the tract in accordance with applicable regulations.

In January, 1924, Kieffer, without any concurrence by the United States or by the company, platted that tract as a townsite—with blocks, lots, streets and alleys—and caused the plat to be filed and recorded in the office of the clerk of the county. Although knowing of the producing well and that the company was intending to proceed with further drilling and operations under the lease, Kieffer began selling and contracting to sell lots in the townsite and encouraging purchasers to build thereon. Several lots were sold or contracted to be sold and the purchasers began lastly to place buildings thereon for residential and business purposes.

Thereupon the lessee company and another company which had acquired an interest in the lease—one a corporate citizen of Maine and the other of Colorado—brought a suit in the federal district court for Wyoming against Kieffer and others—all citizens of that State—to prevent the sale and use for townsite purposes of the tract on which operations under the lease were proceeding, to prevent a contemplated platting and disposal of the other tract as a townsite, and to enforce the plaintiffs' right to use all the surface of both tracts in the operations under the lease—the use of all being alleged to be necessary. There was also a prayer for general relief. The prayers for specific relief were limited to the term of the lease.

The defendants answered jointly. The material portions of the answer were to the effect (a) that the court was without jurisdiction, (b) that the value of the matter in controversy was less than the jurisdictional requisite, (c) that the bill was without equity, (d) that there was an adequate if not exclusive remedy at law, (e) that a large portion of the lands in question was without oil or

gas content; (d) that the platting, sale and use of the lands for townsite purposes would not interfere with the full enjoyment of the plaintiffs' rights or operations under the lease; and (e) that the defendants "have at all times been ready and willing to let plaintiffs have the full, beneficial use of their lease upon their complying with the law, and defendants are now ready and willing to enter into negotiations with plaintiffs with the view of fixing the amount of damages which may be done by plaintiffs to defendants' improvements, or submit said question to a court of competent jurisdiction as provided in the Act of July 17, 1924."

The district court, after a full hearing on the issues, gave a decree awarding the plaintiffs by way of injunction most of the relief sought in their bill. 1 Fed. (2d) 706. The court found, as recited in the decree, that the value of the matter in controversy was in excess of the jurisdictional requisite; that the lands in question "are practically all within the producing structure of the Salt Creek oil field"; that use of "practically the entire surface" is necessary "for the full development" of the underlying oil and gas deposits and for "reasonably economical, efficient operations" under the lease; that the buildings constructed and intended to be constructed as part of the townsite venture will "take up space required by plaintiffs in their lawful operations"; that the occupancy and use of the lands as a townsite will interfere with such operations, will increase the expense of conducting them, and will enhance the danger of explosion and fire which otherwise attends the production of oil and gas, and that the plaintiffs will thus be subjected to continuing and irreparable injury and damage.

On an appeal by the defendants the circuit court of appeals said:

"There is substantial evidence in support of the court's finding that the tract is within the producing structure of the oil field, and that the entire surface will be necessary for the use of plaintiffs in its development and in the production and removal of the oil and gas that will be found. There was testimony to the contrary, but the court's findings of fact have ample support. It had better opportunity to weigh the evidence than we have, and we accept those findings."

Then coming to the equitable remedy invoked by the plaintiffs, that court held that the act of 1914 prescribes a mode of procedure for enforcing the lessee's right to use the surface, that this procedure is intended to be exclusive and in the nature of a condemnation proceeding, which is regarded as a proceeding at law rather

than in equity; and that by the course taken in the district court Kieffer and his grantees were denied a constitutional right to have the issues tried by a jury. Accordingly the decree was reversed with a direction to dismiss the bill and leave the plaintiffs to their statutory remedy. 9 Fed. (2d) 260.

Mr. Justice VAN DEVANTER, after making the foregoing statement of the case, delivered the opinion of the Court.

The findings of fact by the district court before described have such support in the evidence that they should be accepted by us. Two were accepted by the circuit court of appeals, as shown in the quotation before made from its opinion, and the others were not considered. Those not considered are equally well supported.

The chief question presented is whether the act of 1914 prescribes an exclusive remedy at law applicable to the situation disclosed and thus prevents the plaintiffs from suing in equity, as held by the circuit court of appeals.

The acts of 1914 and 1920 are to be read together—each as the complement of the other. So read they disclose an intention to divide oil and gas lands into two estates for the purposes of disposal—one including the underlying oil and gas deposits and the other the surface—and to make the latter servient to the former, which naturally would be suggested by their physical relation and relative values. The act of 1914, in providing for the disposal of the surface, directs that there be a reservation of the oil and gas deposits, together with the right to prospect for, mine and remove the same, meaning, of course, the right to use so much of the surface as may be necessary for such operations. And the act of 1920, in providing for the leasing of the oil and gas deposits, provides (§ 29) for a reservation of the surface, in so far as said surface is not necessary for the use of the lessee in extracting and removing the deposits. In effect therefore a servitude is laid on the surface estate for the benefit of the mineral estate to the end, as the acts otherwise show, that the United States may realize, through the separate leasing, a proper return from the extraction and removal of the minerals.

The lease held by the plaintiffs and the homestead patent issued to Kieffer were drafted in keeping with the acts thus understood. In both the required reservations are plainly expressed. Under the lease the plaintiffs have the right to extract and remove the

oil and gas, as also the appurtenant right to use the surface so as may be necessary. In the homestead patent these rights distinctly excepted and reserved from the estate thereby gran Their exercise involves no taking of anything granted by the pat Nor is the one who under the patent owns the surface, with t rights reserved, entitled to compensation for the minerals ta or the use made of the surface. The only compensation which rightfully may demand is, as the Act of 1914 says, for "dama caused" by the mining operations. The sentence next preced that in which these words occur makes it fairly plain that t refer to damages to "crops and improvements," and the title the act, coupled with the reference to "crops," shows that "a cultural" improvements are the kind intended. Certainly i not intended to include improvements placed on the land, at the mining operations are under way, for purposes plainly compatible with the right to proceed with those operations u the oil and gas are exhausted. It well may be that, if the operat are negligently conducted and damage is done thereby to the s face estate, there will be liability therefor. But such liability ensue, not from admissible mining operations and use of the surfa but from the inadmissible negligence causing the damage.

By this suit the plaintiffs are not seeking to acquire a right use the surface but to protect from wrongful obstruction and pairment the right which they already have. Nor are they seek to enforce their right to enter and begin mining operatio More than a year before the suit was begun they entered, took mining equipment and supplies, erected houses for their workm began drilling for oil and gas and at large cost completed a p ducing well—all with the knowledge and acquiescence of Kief then the sole surface claimant. After their operations were t under way, Kieffer platted as a townsite the forty acres wh they were operating and began actively to sell and contract to the lots as platted, and the purchasers began to erect buildi thereon for residential and business purposes. Kieffer was a contemplating taking like action as to the other forty acres was then that the suit was begun. It is directed chiefly agai the sale and use of the surface for townsite purposes and is ba on the theory—sustained by the findings made on the proofs s mitted at the trial—that practically the whole eighty acres within the producing structure of the oil field, that use of pr

tically the entire surface as necessary for conducting reasonably efficient operations under the lease and that the sale and occupancy of the surface for townsite purposes will seriously interfere with the plaintiffs' right to use the same in their mining operations and will obstruct and impede the further prosecution of those operations and thereby subject the plaintiffs to continuing and irreparable injury.

With this understanding of the situation and of the chief object of the suit, we think it plain that the plaintiffs were entitled to the interposition and aid of a court of equity to prevent the threatened occupancy and use of the surface for purposes incompatible with their right to continue the mining operations under the lease and to make any necessary use of the surface. Certainly they were without the plain, adequate and complete remedy at law which under § 267 of the Judicial Code precludes resort to a suit in equity.

The circuit court of appeals based its decision on the part of the act of 1914 which, after directing that the patent for the surface estate shall contain a reservation of the underlying oil and gas deposits, with the right to prospect for, mine and remove the same, provides that lessees of the United States may enter, occupy so much of the surface as may be required, and mine and remove the minerals, "upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages."

The plaintiffs take the position that the bond given by the lessee and approved by the Secretary of the Interior when the lease was issued satisfied that provision. In this the plain words of the provision are neglected. They call for a bond to be given in a judicial proceeding wherein the damages may be ascertained and fixed. The circuit court of appeals so regarded them.

But we are unable to agree with that court's ruling that the provision requires that the bond be given and the damages assessed only in an action at law. The words of the provision are "an action instituted in any competent court," and we think the matter is one which the district court was and is competent to deal with in this suit.

It is a general rule that a court of equity, in a suit of which it has and takes cognizance, may administer complete relief between

the parties even though this involves the determination of legal rights which otherwise would not be within the range of its authority, *Camp* v. *Boyd*, 229 U. S. 530, 552; *McGowan* v. *Parish*, 237 U. S. 285, 296; *United States* v. *Union Pacific Ry. Co.*, 160 U. S. 1, 50, *et seq.* And under that rule a court of equity in awarding relief to one party may impose conditions protecting and giving effect to correlative rights of the other. *Walden* v. *Bodley*, 14 Pet. 156, 164; *Lynch* v. *Burt*, 132 Fed. 417, 432; *Burnes* v. *Burnes*, 137 Fed. 781, 791.

So, while the provision on which the decision of the circuit court of appeals rests cannot be held to be an obstacle to the maintenance of this suit in a court of equity, we think it shows a need for modifying the decree of the district court by providing therein for an ascertainment in this suit of any damages which the plaintiffs' entry and operations under the lease may have caused to the agricultural improvements or crops of the owner of the surface estate, and also by conditioning the relief awarded the plaintiffs upon their giving a good and sufficient bond or undertaking to pay such damages within a limited time after the same are ascertained.

The evidence appears not to have been taken with a view to an ascertainment of the damages, but there is testimony tending to show that the owner of the surface is asserting a claim for damages done at the time the plaintiffs entered or soon thereafter. It of course is admissible to fix the damages by agreement. But if this be not done there will be need for a hearing on that question.

We conclude that the decree of the circuit court of appeals should be reversed and that the cause should be remanded to the district court with directions to modify its decree in accordance with what is said in this opinion.

Decree of circuit court of appeals reversed.

Decree of district court modified.

A true copy.

Test:

Clerk, Supreme Court, U. S.